IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Writ Petition No.947 of 2007

M/s.G.S.L. (India) Ltd. & ors. Petitioners
Vs.
State of Maharashtra & anr. Respondents

Mr.A.M.Saraogi with Mr.Nivas Kamble for petitioners.
Ms.Revati Mohite-Dere for resp.no.2.
Mr.A.S.Shitole, APP for State.

CORAM: B.H.MARLAPALLE, J.

October 30, 2007.

P.C.

. Heard Mr.Saraogi, the learned counsel for the petitioners and Ms.Revati Mohite-Dere, the learned counsel for the respondent no.2 - original complainant in CC No.496/S/2002 filed under Section 138 of the Negotiable Instruments Act, 1881.

. During the course of trial of the complaint, the complainant company moved an application for leading secondary evidence under Section 65-C of the Indian Evidence Act, 1872 and the same came to be allowed by the learned Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai on 17/4/2007. The said order was challenged in Criminal Revision under Stamp No.2093 of 2007 and the same came to be dismissed by

the learned Addl. Sessions Judge for Greater Mumbai on 10/5/2007. Hence this petition under Article 227 of the Constitution.

. Mrs.Revati Mohite-Dere has placed before me the photostat copies of the notices issued by the complainant - company's Advocate on 22/7/1996 to the accused - company as well as its Directors. The first notice is regarding the dishonour of cheque nos. 665101 and 665102 and the second notice is pointing out to the petitioner - company that the lease agreement between the parties was entered on 30/9/1993 under which the petitioner - company had taken plant and machinery on lease and agreed to pay a sum of Rs.1,15,45,100/- towards the rentals in 20 quarterly instalments and out the same 16 instalments had fallen due. However, the petitioner - company had paid only nine instalments to the tune of Rs.51,95,296/-. The learned Metropolitan Magistrate is right in his observations in the impugned order that these documents, prima facie, bear the acknowledgement of the receipt and, therefore, the company was justified in making an application for leading secondary evidence.

. Hence no interference is called for in the impugned order dated 17/4/2007 passed by the learned Metropolitan Magistrate. Petition is rejected.

(B.H.MARL